

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.445 of 2019

Arising Out of PS. Case No.-171 Year-2015 Thana- DUMRAO District- Buxar

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Kamal Dev Singh, S/o Late Yugal Yadav, R/o Village- Pratap Sagar, P.S.-
Dumraon (Naya Bhojpur O.P), District- Buxar

... .. Appellant/s

Versus

1. The State of Bihar
2. Nayan Kumar Yadav @ Sadhu Yadav S/o Late Rati Yadav R/o village-
Pratap Sagar, P.S.- Dumraon (Naya Bhojpur O.P), District- Buxar
3. Jagdish Yadav S/o Ram Samhut Yadav R/o village- Pratap Sagar, P.S.-
Dumraon (Naya Bhojpur O.P), District- Buxar
4. Birendra Yadav S/o Sukhnandan Yadav R/o village- Pratap Sagar, P.S.-
Dumraon (Naya Bhojpur O.P), District- Buxar
5. Munna Yadav S/o Gurej Yadav R/o village- Pratap Sagar, P.S.- Dumraon
(Naya Bhojpur O.P), District- Buxar
6. Manoj Yadav S/o Birendra Yadav R/o village- Pratap Sagar, P.S.- Dumraon
(Naya Bhojpur O.P), District- Buxar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Satyapal Singh, Advocate
For the Respondent/s	:	Mr.Shiwesh Chandra Mishra, APP
		Mr. M.K. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 18-11-2019

Heard learned counsel for the appellant, learned counsel
for the State and learned counsel for the respondent nos. 2 to 6.



In this case, the appellant, who is the informant, is seeking prayer of holding the charges have been proved against certain respondents as well as enhancement of punishment by challenging the judgment dated 30.01.2019 and order of sentence dated 31.01.2019 passed in Sessions Trial No.196 of 2016 arising out of Dumraon (Naya Bhojpur OP) P.S. Case No.171 of 2015 whereby and whereunder he has not found charge proved against Gama Yadav, Bhim Yadav and Guruj Yadav for the offences under Sections 147, 148, 323/149, 447/149, 336/149, 337/149, 302/149 of the Indian Penal Code and, accordingly, they have been acquitted. He has found the charge under Sections 323/34 of the Indian Penal Code proved against Nayan Kumar Yadav, Jagdish Yadav, Birendra Yadav and Munna Yadav and he has also found charge under Section 323 of the Indian Penal Code proved against Manoj Yadav and they have been convicted and have been discharged after giving the benefit of Section 3 of Probation of Offenders Act. With respect to accused Upendra Yadav, the charges under Section 302 of the Indian Penal Code and Section 27 of the Arms Act have been proved and he has been convicted and sentenced to undergo imprisonment for life with fine.

Basically the appeal is against those who have been acquitted as well as released after giving benefit under Section 3 of



the Probation of Offenders Act by the trial court on the basis of material evidence brought by the prosecution and there have been acquittal on account of insufficient material against the respondents, namely, Nayan Yadav, Jagdish Yadav, Birendra Yadav and Munna Yadav, who ought to be convicted under Section 302/149 of the Indian Penal Code.

The court below has considered the evidence of all the witnesses and particularly the informant, who has been examined as P.W. 3, has failed to state complete description of the incident.

Counsel for the appellant submits that the evidences led by prosecution are sufficient to hold that Nayan Kumar and Jagdish Yadav are guilty of the charges as they are the persons, who exhorted and upon that accused Upendra Yadav fired upon the deceased.

From the impugned judgment, it appears that both sides altercated on account of dispute in playing cricket and later on it turned horrific situation led to death of one person. The court below has considered the material from different angle and arrived to a finding that the charges have been proved specifically with respect to accused Upendra Yadav under Section 302 IPC and it has not been extended to apply Section 302 IPC for Nayan Kumar and Jagdish Yadav. After examining the evidence, which has been brought by the prosecution, charges have been found proved under



Section 323/34 IPC and the prosecution has failed to prove any charge against the respondents, namely, Gama Yadav, Bhim Yadav and Guruj Yadav.

In such view of the matter, we are of the considered opinion that the view, taken by the learned trial Court, is a plausible one and does not require any interference by us in appeal. There is no perversity in the judgment with respect to the respondents under appeal. The order passed in this appeal will not effect in any manner to those appeal/appeals against the order of conviction and sentence.

This appeal is, therefore, not admitted and shall accordingly stand dismissed.

(Shivaji Pandey, J)

(Prabhat Kumar Singh, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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